

JOSEPH GARNER ANTHONY

THE WATUMULL FOUNDATION ORAL HISTORY PROJECT

Joseph Garner Anthony

(1899 -       )

Mr. Anthony, one of Hawaii's most prominent and controversial attorneys, has practiced law in Honolulu since he graduated from Harvard University in 1926. On the recommendation of Dr. Roscoe Pound, dean of the Harvard Law School, Urban E. Wild asked him to join the law firm of Smith, Wild, Beebe and Cades. After a year with that firm he moved on to the law offices of Alexander George Morison Robertson, the eminent attorney he had defeated in court, and Alfred Lowrey Castle. It is this firm that now bears his name.

In August 1942, Mr. Anthony was appointed attorney general by Governor Ingram M. Stainback and served in that position for a year and a half, doing everything possible to restore the civil government during a period of martial law.

Mr. Anthony is perhaps best known for two famous cases he tried successfully: the Lloyd C. Duncan case which tested the validity of martial law; and the Fullard-Leo family's case against the United States Navy which had claimed the privately owned Palmyra Island for the United States government.

Mr. Anthony discusses his background, law practice, and some of the cases he has tried. He also tells about his World War II experiences as attorney general and as a member of the draft board.

Lynda Mair, Interviewer

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INTERVIEW WITH JOSEPH GARNER ANTHONY

At his law office, 333 Queen Street, Honolulu 96813

November 12, 1971

A: Joseph Garner Anthony

M: Lynda Mair, Interviewer

M: I have your parents' names [Charles Howard and Rachel Edith Humphreys Anthony], your birthday [December 19, 1899], and where you were born [Philadelphia, Pennsylvania].

A: Uh huh, I see.

M: And I'd like to know something about your parents, more about your father--if possible, what he did for a living.

A: He was a contractor.

M: Construction work. Oh, I see. Did you spend most of your childhood then--all of it--in Philadelphia?

A: Right.

M: Let's see. I have a list here of the schools you went to and all: Swarthmore [College, AB 1923]; Harvard [University, LLB 1926]. And the LL.D. from the University of Hawaii [1946], I imagine, was an honorary degree?

A: Honorary, right. Phi Beta Kappa's honorary too--Swarthmore.

M: Let's see, you got out of Harvard in 1926, then.

A: Right.

M: And you went into practice immediately after that?

A: Came out here.

M: How did you happen to come to Hawaii?

A: Well, I tried to get a job in Philadelphia and the most they would pay me was forty dollars a month. (Lynda

chuckles)

M: Wow.

A: My wife was assistant dean of women.

M: Where?

A: West Chester State Normal School, Pennsylvania. And she was making two hundred [dollars] a month plus board. (Lynda laughs) I turned them down and I got more for a job in New York. And then the dean of the Harvard Law School was very annoyed at me. He didn't like it that I was going to New York. He said, "There's this fellow coming out here from Hawaii and he wants an A man." This was Dean Roscoe Pound, great lawyer.

M: Yes, I've heard the name.

A: Well I said, "Dean, if he wants an A man he doesn't want me." (Lynda laughs) "Oh," he said, "I know, you got a B-plus." And he was right. So I met with Earl Wild. U. E. Wild.

M: Oh, Urban.

A: Urban Earl Wild. Smith, Wild, Beebe and Cades [law firm]. And he hired me so I went down and got married first and came out here. I thought I'd be here for a year and I've been here ever since. [He married Dorothy McClaren on June 29, 1926.]

M: Your wife gave up her job then.

A: Oh yes, yes.

M: Did she work here after you got to Hawaii?

A: She worked at the University [of Hawaii] as an English professor for one semester until her baby arrived. (both chuckle)

M: Oh.

A: So that's it.

M: How long were you with Smith and Wild?

A: A little over a year.

M: What was your initial reaction when you got to Hawaii?

A: Oh, terrific.

M: You liked it.

A: Yes. Came down on the steamer, you know.

M: What sort of work did you do initially?

A: I did property work mostly, but I tried a case against the greatest lawyer that Hawaii has ever known--Alec Robertson. A.G.M. Robertson:

M: Did you win?

A: Yes. (laughter)

M: That must have made your reputation a little brighter, huh?

A: It annoyed the old man so he then offered me a job.

M: Oh. So you went with his firm.

A: I went with his firm.

M: That's Alec Robertson.

A: Alexander George Morison Robertson, former Chief Justice of the Supreme Court, great lawyer.

M: Did he have his own office or was he with . . .

A: Oh yes, yes. He was Robertson and Castle.

M: Which Castle?

A: Alfred [Lowrey] Castle.

M: What were some of the things that you did when you worked with him? I mean anything that stands out in your memory.

A: Well, I tried a lot of partition cases.

M: You'll have to explain that. I'm not a lawyer. (chuckles)

A: It's when you divide up land. I tried a lot of Rapid Transit cases. HRT [Honolulu Rapid Transit].

M: What sort of cases would those be? You mean where people were suing the company?

- A: Yes. You see, they had a street railway here. When you'd get hurt on the streetcar, why, you'd sue the company and I'd defend them.
- M: You defended the company.
- A: Yes.
- M: What were the partition things about?
- A: Dividing up hui land.
- M: Oh. You mean that went back to the Hawaiian bloodlines and so forth.
- A: (no audible response to the question) I did a lot of work for the airlines.
- M: When was this? This was after they were commercial, you mean?
- A: Yes. That's Hawaiian Airlines. Then probably the most famous case I tried was the Duncan case. [1944-45]
- M: That doesn't ring a bell with me.
- A: It doesn't? How old are you?
- M: I'm thirty.
- A: Thirty. Duncan versus Kahanamoku was the case which tested the validity of martial law here.
- M: Oh, this was in the 1940's then. You know I read where you've written several articles for law periodicals on martial law during the war.
- A: That's right. I wrote that book for Stanford [University], published by Stanford Press [in 1955].
- M: Is that the Hawaii Under Army Rule one?
- A: That's right.
- M: That's a book, not just an article.
- A: That's right.
- M: Could you tell me more about your experiences with that case?

- A: Well, I won it in the trial court and I lost it in the Court of Appeals with five different opinions rendered by the Ninth Circuit and I appealed it to the Supreme Court and won it there.
- M: Wow. Could you tell me more about it? I guess I could go look it up but I'm just curious.
- A: Well, they had military courts here, you see, and I represented Lloyd Duncan who was a defense worker out at Pearl Harbor. He got in some argument with a Marine guard and they finally arrested him, charged him and tried him before a military court. You know, just called him in: What's your name? What did you do? How old are you? Nine months in the clink. So I got him out on a writ of habeas corpus. That writ means that you must produce the body. You know Latin?
- M: Yes, a little--long ago. (chuckles)
- A: Habeas: you have; corpus: the body.
- M: Yes. What was the Kahanamoku part of it?
- A: That was the sheriff. The sheriff had him. Duke Kahanamoku was the sheriff for the City and County [of Honolulu].
- M: But he was working for the military?
- A: The military told the sheriff to lock him up, see.
- M: Oh, I see. Then he wasn't really involved.
- A: Oh no! No. (laughter) He just did what the generals told him to do. Anyhow, it came out all right in the end.
- M: That's interesting because I interviewed General [Charles] Herron. You must remember him.
- A: Oh sure.
- M: And he told me he thought that it was a terrible mistake for the Army to take over here.
- A: Sure it was.
- M: He'd retired, I think, in 1940.
- A: I told them that.
- M: Yes. Well, he didn't think it was a good idea, that the

Army made a terrible mess of it.

A: They did. I told [General Robert C.] Richardson [Jr.] that. Herron was all right. They wanted me to sue Herron after the thing was all over.

M: Why Herron?

A: Well, he'd locked up a number of people, you know. I told them, "Nothing doing, this is all pau."

M: Um hm.

A: No, no. It was just stupidity on the part of the Army.

M: They seem to tend that way.

A: What?

M: They seem to tend that way, don't they?

A: Yes. Well, when the war broke out they immediately put everything under Army control, issued all these orders, you know. They're referred to in my book if you want to look at it. They were going to lock up all the Japanese and move them all over to Molokai. I was up there at the general's [General Walter Short] office the Monday following Pearl Harbor, December 7th, and I argued with him. I said, "General, who do you think's going to collect the garbage and run the streetcars and whatnot if (laughter) you lock up all the Japanese?"

M: Yes.

A: Oh boy. Anyway, they finally allowed that they wouldn't lock them all up but they sent a lot of them out here to an outfit. They had one place, Sand Island, where they had them locked up; and also out at Kipapa Gulch they had another place for them.

M: Oh. (laughing) They were the nicest places on the island.

A: But they finally turned them loose.

M: Did you get involved in other suits against the military or any other . . .

A: Oh sure. I became attorney general, you know, [in 1942 when Governor Ingram M. Stainback took office] and I had all those to . . .



M: Uh huh, 1942 you were.

A: Yes.

M: Was that just an appointed thing?

A: Yes.

M: Like it is now.

A: Yes. I resigned from my firm and took the job at a very nominal salary, then we finally got it straightened out. Had to go back to Washington, [D.C.].

M: I see you were attorney general for one year.

A: A year and a half.

M: Did you just take it on with that understanding?

A: Oh sure, yes.

M: You were just going to be temporary.

A: I just wanted to get rid of the military regime.

M: Was it the fact that you had done some of the trials involving that problem? Did that influence the fact that you were asked to be attorney general?

A: Oh yes. Yes. Governor Stainback was quite an able person who was a federal judge. He was appointed governor and he asked me to become his attorney general and I accepted.

M: He was appointed governor after the war started or just before?

A: After.

M: After it started.

A: [Joseph Boyd] Poindexter was the governor [until August 24, 1942].

M: Did he die or what?

A: No, he just collapsed.

M: Oh. General Herron was telling me what a--what did he call him? Some derogatory term meaning that he was sort

of a milk toast.

- A: Yes. Yeah, he just let the generals do whatever they wanted and [Secretary of the Interior Harold LeClair] Ickes wanted to get rid of him so he appointed Stainback to take his place. [Actually, Governor Stainback was appointed by President Franklin Delano Roosevelt.]
- M: It must have been a pretty tense time.
- A: It was. I was not very popular here.
- M: With whom? You weren't popular with the military, I would assume that.
- A: That's right. Well, the business community, you know, they were a little annoyed.
- M: Why was that?
- A: Well, the military froze everybody in his job, froze wages, and it was to their [the employers'] advantage just to play along with the military, financially, but they finally saw the light, reluctantly.
- M: In your practice over the years, have you done more of the sort of personal injury type of things or are you more in . . .
- A: No, I do more land work than anything else.
- M: You do.
- A: Corporate work.
- M: But you have had some of these rather outstanding cases from time to time.
- A: Oh yes, sure. I tried the Fullard-Leo case.
- M: I know that name but I can't think what [the case was].
- A: Fullard-Leo was the [Palmyra] Island [case]. The island down here [in the Central Pacific Ocean] that the Navy claimed [which was owned by the Fullard-Leo family].
- M: No, I don't know.
- A: Well anyhow, I tried that and beat the Navy on it. I've had lots of them. It would take me all afternoon and tomorrow afternoon.

M: My husband either knows you or knows of you.

A: What's your husband's name?

M: Donald Mair. He works for Hawaiian Trust Company.

A: Oh yes, I know him.

M: He told me one time that you had done some cases that were the sort of things that tended to make one unpopular in certain circles.

A: Oh sure. Sure. Well, I represent the Bishop Estate. They're always in trouble.

M: Uh huh. That must have kept you busy all the time.

A: The Damon Estate.

M: How did you come about getting a client like the Bishop Estate?

A: They were Robertson's clients, you see, and then I came in and I took over the work.

M: You stayed with his firm, then, a long time.

A: Ever since.

M: This is his firm and you just changed the name.

A: That's right.

M: Oh, I see. So you inherited a lot of these old accounts.

A: That's right. You know Robinson? You've never heard of them?

M: The Robinsons, yes.

A: I do all their work.

M: Have you had difficulties working with these various large estates as far as being sued by individuals? I mean, of course lately the Bishop Estate has been in the news and all, but over the long haul what sort of work do you actually do besides the business, whatever that involves?

A: Oh, condemnation cases.

M: Condemnation?

- A: Eminent domain, probate, trust work, the whole run-of-the-mill.
- M: Um hm. (recorder turned off with counter at 286 and tapping resumed on Side 2 with counter at 145) Let's see, I wanted to ask you a couple more questions about your outside activities, other than your law practice. Some of these, I imagine, were just things that you were. . . . Let's see, you were president of the Bar Association here 1937-39.
- A: State delegate to the American Bar [Association, 1944-47 and 1953-62]; board of governors, the American Bar [1961-65]; Queen's Hospital [president, 1945-49].
- M: How did you get involved there?
- A: The Queen's?
- M: Um hm.
- A: I got sucked in. (Lynda laughs) [Charles Reed] Hemenway asked me to go on the board and I didn't know what he had in the back of his mind. So he was the president--Charlie Hemenway. He was the president of Hawaiian Trust and A & B [Alexander & Baldwin]. As soon as I got on the board, why, he had me elected president of the Queen's Hospital.
- M: That must have been quite a job.
- A: Well, a job I didn't want. I carried on for awhile and then I got ahold of E.E. Black, a client of mine--I'd done a lot of work for him for forty years--and I persuaded him to come on the board. I told him I wanted him to take my place, which he did. (laughter) He's a great man. I don't know whether you know him or not.
- M: Yes, I've met him.
- A: He came on. I'm still on the board but I'm the vice president now; he's the president. Been on ever since.
- M: What sort of work does that involve? Do you have to make all the decisions about policy?
- A: Oh, policy decisions, you know, but I was too busy. It takes a lot of time, that sort of thing.
- M: Does the board more or less direct in a broad way the administration of the hospital?

A: They do.

M: What about the regents. Let's see, you were a regent for seven years at the University [of Hawaii, 1951-58]. What sort of group did you have?

A: On the board? They were pretty good. Gregg Sinclair was the president then and he's a good man.

M: Uh huh.

A: We were never in favor of a medical school. (Lynda chuckles)

M: How about a law school? (laughs)

A: Or a law school, the reason being they obviously would be second-rate.

M: Why obviously?

A: Well.

M: Just for the sake of the argument.

A: No, no, that's all right. Well, you can't take a little two-by-four community like this with now--what?--seven hundred thousand people and expect to reach the eminence of a city that has a great population and a great hinterland, like New York with ten million or Chicago with seven or eight, Harvard, California. You just can't do it. They're going to try it but you cannot get the top-flight caliber there in the teaching staff and it's a very expensive operation.

M: Yes.

A: And we always took the position you're better off to, if the boys wanted to go to medical school, well, go ahead and subsidize them; send them up there to Johns Hopkins [University] or the Mayo Clinic or wherever they wanted to go. However, maybe I was wrong, I don't know. Time will tell.

M: Yes. I sort of like the subsidizing idea myself, after being in graduate school at the University [of Hawaii]. It wasn't nearly as good as the undergraduate schools on the Mainland that I'd been to.

A: Where did you go on the Mainland?

- M: I went to Whitman College--that's in Washington--and Lewis and Clark College in Portland, [Oregon]. Both of them are small private schools.
- A: Oh, I know. Whitman's a good school.
- M: Yes. Donald and I both went there and that's the best education I've ever had, that three years there.
- A: I went to a little school too--never heard of it: Swarthmore [College].
- M: Yes, that's the school I wanted to go to but my folks couldn't afford it.
- A: Oh, you know what they charged me when I was in Swarthmore?
- M: Something like fifty dollars or something ridiculous, no doubt.
- A: Four hundred and fifty [dollars].
- M: A year?
- A: A semester for room, board and tuition.
- M: Oh my, it would have been over two thousand a year.
- A: Oh I know.
- M: Now it must be like four thousand.
- A: I don't know what it is, but they had an enormous waiting list there to get into that place.
- M: Yes, you have to be an absolute genius.
- A: Most people had never heard of it. You know it's a little two-by-four Quaker school.
- M: How did you happen to pick it?
- A: You see, when I went to college--well, I was in the Army, see.
- M: Before you went to college.
- A: Yes. I enlisted in the Army when I was in high school.
- M: Hmm. (chuckles)

- A: Lied to them, told them I was twenty-one; I was seventeen.  
(chuckles)
- M: Really?
- A: Yes. And finally I got out of the Army in 1919 and I was going to Haverford [College].
- M: Yes, I've heard of that.
- A: Haverford is a terrific school, you know, on the Main Line outside of Philadelphia. Then I had a girlfriend whose sister went to Swarthmore and she introduced me to her sister. Her sister persuaded me to apply at Swarthmore. Well in those days--this was 1919--if you were graduated from high school and particularly a serviceman- you know, I was an ex-serviceman--they'd just take you in, no questions asked.
- M: Oh, you didn't have to go through a big . . .
- A: Oh no, no, no. No humbug then. (Lynda chuckles) Read and write and you had to get through high school, of course, so that's how I got in.
- M: Was it academically strenuous?
- A: Yes, quite a tough place really.
- M: Well, with those kind of admission things they must have lost a lot of students the first year or so, huh?
- A: Yes. Yes, they did. Well they did at Harvard [University], too, when I went to Harvard. They had a rule at Harvard that they would drop out one-third every year just automatically. The professor--I'll never forget him: Warren--the first day in school he'd say, "Now gentlemen, look to the right, look to the left, and one of you three is not going to be here." (laughter) Kind of rough. They don't do that anymore, though, there.
- M: Do they make the courses that difficult?
- A: Well no, they want to cut down. See, we had a big school. I think there were about four hundred and fifty in my first-year class at Harvard and they didn't want that many. They wanted about two [hundred and] fifty, so the only way they could do it would be . . .
- M: Everybody below a certain level.

- A: Yes, kick them out. They don't do that anymore. Now they screen them more and they're pretty sure that anybody who gets in won't get kicked out.
- M: Was Swarthmore a real liberal school then?
- A: Oh yes.
- M: As schools went.
- A: Always has been. A Quaker school, you know, and the Quakers are very strict in their way--I mean as far as meeting is concerned.
- M: Did they indoctrinate people in their beliefs?
- A: Oh no, no, no.
- M: You weren't a Quaker.
- A: No, my grandmother was a Quaker. The only thing you [as a student] had to do, you had to go to collection.
- M: Was that a service of some kind?
- A: Collection was ten minutes the first thing in the morning in the auditorium. Everybody would be there; had to be there. Sometimes somebody said something; sometimes they didn't. Sometimes they'd just sit there for ten minutes, meditate. When the ten minutes was up the president would get up and that was the signal that would mean collection was over.
- M: It's kind of a nice idea really.
- A: Oh sure.
- M: Kind of get your mind collected first thing in the morning.
- A: Well, if anybody had anything to say, why, he could say it if he wanted to and no strings attached. If he didn't, why, he just kept quiet. Usually they didn't say anything unless we had some celebrity like Rabindranath Tagore [1861-1941, Hindu poet]. He came there once.
- M: Really?
- A: Oh sure. He spoke at collection in a big, long robe. Well, have fun!
- M: (chuckling) I wanted to ask you, since you went to such a



pacifist school, if you ever got involved in any draft cases or anything like that.

A: No, no. No, I was an ex-soldier. I was on the draft board during World War II and I had to hear some of these draft cases. One day I had a Jehovah Witness come in and he claimed an exemption. I examined him and I said, "Where are you working?" Well, he was working out at Pearl Harbor shipyard. I asked him a few more questions. "Why didn't he want to go in the Army in a noncombatant service?" No, he couldn't do that; Jehovah didn't approve of that. "Thou shalt not bow down before any graven image." Well, I said, "What do you think Jehovah will think about you working out here where you're fixing up all these ships that are going out and kill these Japanese? What would He have to say about that?" "Well," he said, "that's different." Anyhow, I ruled against him but the judge overruled me and turned him loose. (chuckles)

M: Oh really?

A: Yes. Well, I don't have much sympathy with the present war. I think it's a terrible mistake.

M: I think everyone's just about come to that conclusion.

A: I think we should have admitted the Chinese years ago. Whether you like them or not, you can't ignore seven hundred million people, right?

M: Right. I think we should have cut Chiang Kai-shek off at the pass a long time ago. I mean, that's the biggest boondoggle.

A: Oh yes, that--what's her name? Madame [Chiang Kai-shek]?

M: Yes.

A: I was up in San Francisco one time at the Saint Francis Hotel and she moved in. Oh, I think she had about thirty retainers with her, with all her trunks and bags, and it was just outrageous.

M: She'd been raised that way, you know. She was one of those--what was the family name in China? I've been all over that family a million times.

A: I don't know, but we were footing the bill for all that stuff, you know.

M: Yes, yes. Ridiculous.

- A: And even though she was a Wellesley [College] girl, where my daughter [Patricia Anthony (Mrs. John Randolph) Moses] went, we never had any use for that family. Well . . .
- M: You're getting restless. I'll stop. (laughter)
- A: Have you finished my cross-examination? (counter at 408)

END OF INTERVIEW

Re-transcribed and edited by Katherine B. Allen

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## THE WATUMULL FOUNDATION ORAL HISTORY PROJECT

In May 1971, the Watumull Foundation initiated an Oral History Project.

The project was formally begun on June 24, 1971 when Katherine B. Allen was selected to interview kamaainas and longtime residents of Hawaii in order to preserve their experiences and knowledge. In July, Lynda Mair joined the staff as an interviewer.

During the next seventeen months, eighty-eight persons were interviewed. Most of these taped oral histories were transcribed by November 30, 1972.

Then the project was suspended indefinitely due to the retirement of the foundation's chairman, Ellen Jensen Watumull.

In February 1979, the project was reactivated and Miss Allen was recalled as director and editor.

Three sets of the final transcripts, typed on acid-free Permalife Bond paper, have been deposited respectively in the Archives of Hawaii, the Hamilton Library at the University of Hawaii, and the Cooke Library at Punahou School.